

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY FEBRUARY 15, 2007**

MEMBERS PRESENT: Robert Vic Lessard, Chairman
Bill O'Brien, Clerk,
Matt Shaw
Jack Lessard, Alternate
Bryan Provencal, Alternate

OTHERS PRESENT: Kevin Schultz, Building Inspector
Angela Silva, Recording Secretary

The Chairman called the meeting to order at 7:10 p.m. and led the Pledge of Allegiance to the Flag.

Mr. Jack Lessard asked for a moment of silence for Mr. Winthrop Brown who died recently. He was an 85-year-old, long time, Hampton resident who owned Brown's Plumbing.

03-07 The petition of Richard Eaton for property located at 745 Ocean Boulevard seeking relief from Articles 1.3 and 4.5.1 to extend front stairs from 5'6" from house to 8' from house toward front lot line. This property is located at Map 223, Lot 45 in a RA zone.

Mr. Richard Eaton came to the table to speak on this petition. He said he has old brick stairs in the front of his property in disrepair. He would like to replace them with stairs that extend off the house 8 feet, which will be 7 feet of the front lot line. The existing stairs extend out 5 feet six inches, which leaves 9 feet 6 inches as an existing setback.

Mr. Vic Lessard commented that all the other setbacks are grandfathered. When these previously leased lots were sold, the Board of Selectmen gave a blanket variance.

Mr. Eaton went on to read through the 5 criteria as presented with his petition. Part of this residence is rental property. The stairs are deteriorating. Most homes in the neighborhood extend out further than he is asking for.

Questions from the Board:

Mr. O'Brien asked if he has already replaced the right hand set of stairs. He said he had started and then called the Building Department. Chuck (Marsden) visited the property and said he had to come before this Board.

Comments from the Audience: None.

Back to the Board:

Mr. Vic Lessard reported that the requirement is 10 feet, and there is a deed restriction of 7 feet.

Mr. O'Brien MOVED to grant the petition, SECONDED by Mr. Provencal.

The Chairman polled the Board on their acceptance of the 5 criteria. They all were in agreement.

VOTE: For 5, Oppo 0

MOTION PASSES.

PETITION GRANTED.

04-07 The petition of Ryan Hajj for property located at 29 Vrylena's Way seeking relief from Articles 1.3 and 4.5.2 to convert existing deck into three-season sunroom. Relief needed from current 10' setback – when house built side setback was 7'. This property is located at Map 195, Lot 12 in a RB zone.

Mr. Ryan Hajj came to the table to speak on this petition. He said he would like to convert the existing rear deck into a 3 season sunroom. There is an 8 ½ foot side setback existing and will remain the same, as is the rest of the house. Most of the houses in the area have the same setback. Wetlands exist to the rear and to 1 side. The closest point to wetlands is 50 ½ feet. Nothing will be built on the ground. The footings are already there.

Questions from the Board:

Mr. Shaw asked if it will be heated? He said no.

The Board discussed the homeowners association in that neighborhood. Mr. Rajj said he does have approval from them. Mr. Schultz advised him that he will need a letter of approval prior to getting a building permit.

Mr. Rajj then read through the 5 criteria as submitted with his petition.

Comments from the Audience: None.

Back to the Board:

Mr. Shaw MOVED to grant the petition with the stipulation that the room not be heated. It is for 3 season use only. SECONDED by Mr. Jack Lessard.

The Chairman polled the Board on their acceptance of the 5 criteria. They all were in agreement.

VOTE: For 5, Oppo 0

**MOTION PASSES.
PETITION GRANTED.**

05-07 The petition of David & Elizabeth Cargill for property located at 501 Winnacunnet Road seeking relief from Articles 1.3, 4.5 Footnote 12 to the extent that Footnote 13 does not control, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to construct two (2) additional residential units to the site for a total of four (4) units within two (2) structures. This property is located at Map 222, Lot 117 in a RB zone.

Atty. Steve Ells and David Cargill came to the table to speak on this petition. Mr. Ells reported that the surveyor, Ernie Cote, is also in the audience.

Mr. Ells explained that the property is currently improved with a 2 unit dwelling on a relatively large lot. There is almost 60,000 square feet of land with 12,862 square feet of upland. Per 2.3.7a there is 28,314 square feet of useable land for the pre-existing lot of record. In recent years they have asked for a zoning variance for frontage and width to subdivide the lot into 2 lots. That was granted, and then appealed by the abutter. Following litigation, the appeal was denied and the variance was granted. Then during a subsequent appeal to a new article 2.3.7c, the newly created lots were denied. Now we are asking to add a second 2-unit structure, and not to subdivide. So

there will be 4 units, in 2 buildings on the lot. The Board must first determine if this new petition is substantially different than the previous petitions. The Cargill's think it is.

Mr. O'Brien MOVED that this is a substantially different application, SECONDED by Mr. Provencal.

VOTE: For 5, Oppo 0

MOTION PASSES.

Mr. Ells went on to explain that this is an unusually large lot. It cannot be built on without the requested variances due to Article 8 (Multi Family Requirements) and the shape of the lot. This lot is virtually unbuildable for multi-family purposes. This is within the allowed density levels. He reported that he has a letter from the Building Inspector denying a building permit as the proposal doesn't meet the zoning requirements and a variance is necessary. This is a technical requirement. He then read through the 5 criteria as submitted with the petition. This is an allowed use in this zone. This petition meets the underlying requirements for the majority of other uses in this zone. Because of the wetlands buffers and unusual shape of the lot and the Article 8 setbacks, the lot is unbuildable as it sits. This is consistent with the spirit and intent of the ordinance. It is within the density levels and is within an area if similar uses. This will not diminish the value of the surrounding properties, he said.

He discussed with the Board the proposed building and floor plans. The floor plans and the site plan differ in building width. Mr. Ells explained that the building would be up to 38 feet wide. Mr. Cargill reported that the interior of the building hasn't been finalized yet. In the front there are 3 garage bays. The rear is for storage only. There will be 1 unit behind the garages and 1 unit on the upper level. Mr. Cargill offered that he would limit the bedrooms to 4.

Comments from the Audience;

Douglas Bennett, abutter, said he has no problem with the proposal. Mr. Cargill is a great landlord. He has no riff-raff and has the cleanest property on the street.

Patricia Martin, abutter, agrees with Mr. Bennett. Mr. Cargill is a wonderful landlord. This won't hurt the neighborhood.

Dean Grimaldi, 491 Winnacunnet Road, said this is in keeping with the character of the neighborhood and will enhance the neighborhood.

Atty. Jim Loring, representing Elizabeth Mulligan of 506 Winnacunnet Road and Catherine Carpenter and Michael Tallone of 502 Winnacunnet, came to the podium. He explained that all 3 are abutters and all 3 object to the proposal. He submitted to the Board 2 photos of the area in question tonight. This petition is asking for 6 variances. The 5 criteria apply to each of these 6 variances. He explained the purpose of zoning and the reasons for granting a variance. The applicant purchased the property in 1988, knowing very well what he purchased. These Article 8 articles were in the Hampton Zoning Ordinance when he purchased the property. And have never changed. He then mentioned some prior cases like, Harrington vs. the Town of Warner and Fisher vs. the City of Dover, that he feels would pertain to this petition. He argued the special condition of the land. He said this property could be expanded by adding to the existing structure. He brought up a Stanhope letter from 2002 arguing value. He asked that all previous evidence he spoke of in the previous petitions be added to his argument this evening. He said that Mr. Cargill stated previously that he could do this without a variance. He mentioned RSA 674:17, and the 40 foot setback requirement for multi-family, the 10-13 foot separation and 20 foot open space buffer. He said this was shoehorning this building into a very tiny space.

Mr. Vic Lessard said the Planning Board does bring up some of these items. It would be impossible for most lots to meet the Article 8 requirements. They would have to come before this Board. And we do approve some.

Mr. Loring argued that this is not in the spirit and intent of the ordinance because of Article 8. This article is to prevent overcrowding and for safety. He disagrees with Mark Gearreald's interpretation of the Fisher case. He is concerned with the health, value and protection of the marsh. He feels eliminating the subdivision doesn't change why the Board denied the earlier positions. There's no area of poorly drained soils delineated on the plan.

Mr. Vic Lessard that there's good soil where he wants to put this house. Mr. Loring said he doesn't disagree. He spoke to the diminution of value and strongly asked the Board to reject the petition.

Mr. Ells said this proposal is not an over intensive use. If this is built it still would be one of the least dense lots in the area. It's not reasonable to require these setbacks. Nobody else can or does meet them. Virtually everybody who comes before this Board bought their properties with this zoning in place. We would like to do something, things change. We have a right to come before this Board to ask to do what we want to do. We could build this exact structure without a variance and call it a garage. He doesn't know how he can expand the existing duplex without Article 8. It's not our proposal to expand the existing units. The lot line is not imaginary, a subdivision is substantially different from this proposal.

Mr. Bennett added that 5 new condos went in across the street. Somebody could come along with seasonal condos. What he is proposing is more aesthetically pleasing.

The Chairman asked for further comments. There being none, he closed the public portion of the petition.

Back to the Board:

Mr. Shaw feels this is a unique lot. This is not unreasonable. And this is a totally separate petition.

Mr. O'Brien verified the building width to be 38 feet. The Board discussed the absence of floor plans and put Mr. Ells on notice that any further petition he represents should include them. Mr. Ells questioned the reasoning. The Board explained how changes occur at the Planning Board and the Building permit stages. A sketch would be adequate.

Mr. Cargill said he could live with a 36 foot building. The only reason he asked for the extra 2 feet is because of the garage widths and opening the doors. He promises 2 units with 2 bedrooms each.

Mr. O'Brien feels they shouldn't be any closer than 7 feet to the other structure per footnote 12. There is roughly 5 feet between structures in the proposal. Mr. Jack Lessard agrees.

The Chairman polled the Board on the 5 criteria. Mr. Shaw said he's stuck on diminution of value. The neighbor's across the street don't own the view. Overall the value of the neighborhood is improved. If it were a garage it would only need a 7 foot setback. Mr. Provencal and Mr. Jack Lessard agree.

Mr. O'Brien disagrees only because he wants to see a 7 foot separation. Mr. Ells said the petitioner can live with a 7 foot separation and thank you for it.

Mr. Jack Lessard MOVED to grant the petition with the stipulation of having 7 feet minimum between buildings to the furthest extremities shown and indicated on a site plan, 2-2bedroom

units, and meet all other setbacks, **SECONDED** by Mr. Shaw. Mr. O'Brien now agrees with the 5 criteria.

Mr. Schultz suggested the revised site plan be drawn prior to and submitted to the Planning Board.

VOTE: FOR 4, OPPO 0, ABST 1(VL)

**MOTION PASSES.
PETITION GRANTED.**

BUSINESS MEETING:

Mr. Jack Lessard **MOVED** to accept the January 18, 2007 minutes as written, Mr. Shaw **SECONDED**.

VOTE: FOR 3, OPPO 0, ABST 2(BP,BO)

MOTION PASSES.

The Board discussed the fees for submitting a petition.

Mr. Shaw **MOVED** to raise the basic fee from \$50.00 to \$100.00, **SECONDED** by Mr. Jack Lessard.

VOTE: FOR 5, OPPO 0

MOTION PASSES.

None of the Board members or their families receive any financial gain from this.

The Chairman is to talk to Mr. Gearreald about Ellie (Montague) getting some of this money.

Motion the Rehear Administrative Appeal of Decision of Hampton Planning Board 31-33 Ocean Blvd.

Mr. O'Brien **MOVED** to grant a rehearing for petition 61-06, **SECONDED** by Mr. Jack Lessard.

VOTE: FOR 4, OPPO 1(MS)

MOTION PASSES.

Mr. O'Brien **MOVED** to appoint Matt Shaw as an alternate as he is not running for re-election, **SECONDED** by Mr. Jack Lessard.

VOTE: FOR 4, OPPO 0, ABST 1(MS)

MOTION PASSES.

The Board discussed the Colsak Investment cottages and the proposed changes in the buildings.

Mr. Shaw **MOVED** that if there is a change from 2 bedroom cottage style homes to 4 bedroom garrison type homes they will need to reapply, **SECONDED** by Mr. Jack Lessard.

VOTE: FOR 4, OPPO 0, ABST 1(BO)

MOTION PASSES.

Mr. O'Brien abstains because this was before he was on the Board, but he agrees with the Board's reasoning and determination.

Mr. Jack Lessard **MOVED** to adjourn at 9:27 p.m., **SECONDED** by Mr. Shaw.

VOTE: FOR 5, OPPO 0

**MOTION PASSES.
MEETING ADJOURNED.**

Respectfully submitted,
Angela Silva, Recording Secretary